IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1975 of 2006
with
FIRST APPEAL No. 1976 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GOVT. OF GUJARAT & 1 - Appellant(s)
Versus
PATEL MANEKLAL KACHARADAS & 10 – Respondent(s)

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Appearance :
MR SS PATEL, AGP for Appellant(s) : 1 - 2.
MR DEVENDRA PATEL & MR PV NANAVATI for Respondents.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 29/06/2006

ORAL JUDGMENT (Per:HON'BLE MR.JUSTICE J.M.PANCHAL)

1. Admitted. Mr.Devendra Patel and Mr.P.V.Nanavati, learned counsels, waive service of Notice on behalf of the claimant/ claimants in each Appeal. Having regard to the facts of the case, all the Appeals are taken up for final disposal today.

2. By filing these Appeals under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short), read with Section 96 of the Code of Civil Procedure, 1908, the appellants have challenged the common judgment and award dated April 10, 2003, rendered by the learned Joint District Judge, Fast Track Court (II), Mehsana, in Land Acquisition Reference Nos.568 of 1994 and 570 of 1994, by which, the claimants have been awarded additional compensation at the rate of Rs.43.60 ps. per sq.mt. over and above compensation of Rs.2.60 ps. per sq.mt. awarded by the Special Land Acquisition Officer, for

their acquired lands.

3. A proposal was received by the State Government to acquire agricultural lands of village Karannagar, Taluka: Kadi, District: Mehsana, for public purpose of Narmada Canal Project. On perusal of the said proposal, the State Government was satisfied that the lands of village Karannagar were likely to be needed for the said public purpose. Therefore, a Notification under Section 4(1) of the Act was issued which was published in the official gazette on April 25, 1991. the land owners, whose lands were proposed to be acquired, were served with notices. They filed their objections against the proposed acquisition. After considering their objections, the Special Land Acquisition Officer forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands of village Karannagar which were specified in the Notification published under

Section 4(1) of the Act were needed for public purpose of Narmada Canal Project. Therefore, a declaration under Section 6 of the Act was issued which was published in the official gazette on December 19, 1991. The interested persons were thereafter served with notices for determination of compensation. Having regard to the materials placed before him, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs.2.60 ps. per sq.mt. by his award dated August 27, 1993. The claimants were of the view that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, they submitted written applications requiring the Special Land Acquisition Officer to refer the matter to the Court for determination of just amount of compensation payable to them. Accordingly, References were made to the District Court, Mehsana, which were registered as Land Acquisition Reference Nos.568/94 and 570/94.

4. On behalf of the claimants, witness Chandubhai Kachrabhai Patel, who was one of the claimants in Land Acquisition Reference No.568 of 1994, was examined at Ex.13. Over and above stating that the lands acquired were fertile and that each claimant was deriving substantial profit by sale of agricultural produces, the witness produced previous award of the Reference court relating to the lands of this very village rendered in Land Acquisition Reference No.439/99 at Ex.14. The award rendered by the Reference court in Land Acquisition Reference No.439/99 was subjected to challenge before the High Court in First Appeal Nos.682/2000 to 694/2000, and therefore, the judgment of the High Court rendered in those Appeals was produced by the witness at Ex.18. It was claimed by the witness Chandubhai that in the nearby area, industrial development had taken place and that the lands acquired had potentiality to be used for industrial purposes. On behalf of the appellants, no evidence was adduced at all. On appreciation of evidence produced by the

claimants, the Reference Court was of the opinion that previous award rendered by the Reference Court in respect of land of this very village was a relevant piece of evidence for the purpose of determining the market value of the lands acquired in the instant case. Placing reliance on the said previous award and giving benefit of rise in price of lands because of time gap between Notifications issued under Section 4(1) of the Act, the Reference Court has awarded additional compensation of Rs.43.60 ps. per sq.mt. by judgment and award dated April 10, 2003, which has given rise to above numbered Appeals.

5. This Court has heard Mr.S.S.Patel, learned Assistant Government Pleader for the appellants and Mr.Devendra Patel, learned counsel for the claimants at length and in great detail. This Court has also considered the documentary evidence produced before this Court by the learned advocates for the parties. From the record of the case, it is evident that in order

to substantiate the claim for enhanced compensation, witness Chandubhai Kachrabhai Patel was examined by the claimants at Ex.13. During the course of recording of his evidence, he produced revenue record, i.e. Village Form No.7 & 12 to indicate that the lands acquired were fertile and that different crops were being taken by the claimants. What was maintained by the witness before the Reference Court was that industrial development had taken place near the acquired lands and that the lands acquired had potentiality for being put to industrial use. This assertion made by the witness of the claimant could not be demonstrated to be untrue during his cross-examination. Though it was claimed by the witness for the claimants that the lands acquired were highly fertile and that each claimant was earning substantial profit from the sale of agricultural produces, the enhanced compensation was not claimed on yield basis. What was relied upon by the claimants was previous award relating to the lands of this very village which was rendered in Land

Acquisition Reference No.439/99. It is well settled by catena of decisions of Supreme Court that previous award of the Reference Court relating to the lands of the same village from which subsequent acquisition is made is a relevant piece of evidence for the purpose of determining the market value of the lands acquired subsequently from that very village. Under the circumstances, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous award of the Reference Court relating to the lands of this very village which was rendered in Land Acquisition Reference No.439/99. Ex.14, which is the previous award of the Reference Court, indicates that the claimants were awarded compensation at the rate of Rs.38/- per sq.mt. It may be mentioned that the previous award of the Reference Court was subjected to challenge by the State Government in First Appeal Nos.682/2000 to 694/2000 whereas the claimants had filed First Appeal Nos.1396/2001 to 1418/2001 claiming enhanced compensation. The

judgment dated September 14, 2001, rendered by the Division Bench in First Appeal No.682/2000 and cognate Appeals, which is on the record of the case at Ex.18, indicates that the Appeals filed by the State Government were dismissed whereas the claim made by the claimants for enhanced compensation was accepted in part and compensation payable to the claimants was enhanced to Rs.42/- per sq.mt. Therefore, the Reference Court was justified in placing reliance on the decision of the High Court for the purpose of coming to the conclusion that on the basis of previous award of the Reference Court, as modified by the High Court, the claimants were entitled to compensation at the rate of Rs.42/- per sq.mt. It was noticed by the Reference Court that there was time gap of about ten months between the Notification issued under Section 4(1) of the Act by which the lands of this very village were acquired earlier and the Notification issued in the instant case and therefore, the claimants were entitled to rise in price of lands at the rate of 10% per year.

6. On overall view of the matter, this Court is satisfied that just amount of compensation payable to the claimants is determined by the Reference Court on the basis of evidence adduced before it and no ground is made out by the learned Assistant Government Pleader to interfere with the same in the instant Appeals.

7. The appeals therefore, which have no substance, are liable to be dismissed.

8. For the foregoing reasons, the Appeals fail and are dismissed. There shall be no order as to costs. The Registry is directed to draw decree in terms of this judgment.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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